



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/540,591	01/20/2006	Richard Merken-Schiller	HO-P03195US0	9719
26271	7590	09/17/2007		
FULBRIGHT & JAWORSKI, LLP			EXAMINER	
1301 MCKINNEY			DURAND, PAUL R	
SUITE 5100				
HOUSTON, TX 77010-3095			ART UNIT	PAPER NUMBER
			3721	
			MAIL DATE	DELIVERY MODE
			09/17/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/540,591

Applicant(s)

MERKEN-SCHILLER ET AL.

Examiner

Paul Durand

Art Unit

3721

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 06 July 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 June 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
  - 2) ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 3-9, 13-15, 17-21, 25, 27 and 28 rejected under 35 U.S.C. 103(a) as being unpatentable over Patterson (US 4,246,223) in view of Ellison et al. (US 2002/0079611).

In claim 1, Patterson discloses the invention as claimed including permanently deforming a sheet of film 28, forming depressions 70, which the tension is controlled by draw pads 100, while forming controlled creases (in the area of 36) in the material (See figures 2, 3, 6, 7 and col. 3, line 43 – col. 4, line 64). What Patterson does not disclose is the reduction of the tension in a controlled manner during the deforming procedure.

However, Ellison teaches that it is old and well known in the art of article molding to control the reduction of film tension during a deformation process for the purpose of manufacturing a part of uniform thickness (see page 1, para. 0013).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the invention of Patterson with the tension control means as taught by Ellison for the purpose of manufacturing a part of uniform thickness.

In claim 3, the modified invention of Patterson, through Patterson discloses the invention as claimed including controlling the tension by applying retaining pressure to pad 100 in the peripheral regions 162 (See Patterson, figure 6 and col. 5, lines 21-39).

In claims 4-6, the modified invention of Patterson, through Patterson discloses the invention as claimed including, the peripheral regions moving parallel toward one another as the material is stretched in the die.

In claim 7, the modified invention of Patterson, through Patterson discloses the invention as claimed including forming substantially crease free regions 68 and controlled crease regions (in the area of 36) (See Patterson, figure 2).

In claims 8 and 9, the modified invention of Patterson, through Patterson discloses the invention as claimed including heating the web to a controlled temperature prior to deformation, where the temperature is lowered by the transfer of heat into the web (See Patterson, col. 6, lines 23-33).

In claim 13, the modified invention of Patterson, through Patterson discloses the invention as claimed including positive and negative mold 54 and 52 (See Patterson, figures 6 and 7).

In claims 14 and 15, the modified invention of Patterson, through Patterson discloses the invention as claimed including an unheated negative mold 52 and a heated positive mold brought to a constant temperature prior to forming (See Patterson, col. 6, lines 23-33).

In claims 17 and 18, the modified invention of Patterson, through Patterson discloses the invention as claimed including heating and deforming the web between a

Art Unit: 3721

positive and negative mold 54 and 52, and a recovery time after the web has been formed and prior to the loading of the next web, which can be several seconds long (See Patterson, figures 2,3,6,7 and col. 3, line 43 – col. 4, line 64). Additionally, Ellison teaches that it is old and well known in the art to relieve the tension in a controlled manner (See Ellison, page 1, para. 0013).

In claim 19 and 20, the modified invention of Patterson, through Patterson discloses the invention as claimed including the film web being delivered in cycles as blanks are formed by stamp 22 and 24 (See Patterson, figure 1 and col. 3, lines 43-61).

In claims 21 and 28 Patterson discloses the invention as claimed including permanently deforming a sheet of film 28, forming depressions 70, which the tension is controlled by draw pads 100, while forming controlled creases (in the area of 36) in the material and filling the depression with food (See figures 2, 3, 6, 7, col. 1, lines 10-22 and col. 3, line 43 – col. 4, line 64). What Patterson does not disclose is the reduction of the tension in a controlled manner during the deforming procedure.

However, Ellison teaches that it is old and well known in the art of article molding to control the reduction of film tension during a deformation process for the purpose of manufacturing a part of uniform thickness (see page 1, para. 0013)

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the invention of Patterson with the tension control means as taught by Ellison for the purpose of manufacturing a part of uniform thickness.

Art Unit: 3721

In claims 25 and 27, Patterson discloses the invention as claimed including permanently deforming a sheet of film 28, using positive and negative molds 54 and 52 for forming depressions 70, which the tension is controlled by draw pads 100, while forming controlled creases (in the area of 36) in the material and heating means 172 and 174 (See figures 2, 3, 6, 7 and col. 3, line 43 – col. 4, line 64). What Patterson does not disclose is the reduction of the tension in a controlled manner during the deforming procedure.

However, Ellison teaches that it is old and well known in the art of article molding to control the reduction of film tension during a deformation process for the purpose of manufacturing a part of uniform thickness (See page 1, para. 0013)

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the invention of Patterson with the tension control means as taught by Ellison for the purpose of manufacturing a part of uniform thickness.

3. Claims 10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Patterson and Ellison in view of Prena (US 3,762,125).

The modified invention of Patterson discloses the invention as claimed as applied to claim 1 above except for the use of indicia on the web of material, which is deformed during the packaging process. However, Prena teaches that it is old and well known in the art of packaging to provide a film "F" with printed and undistorted indicia marks 48, which are stretched and deformed by rollers 36 and 38 prior to packaging for the purpose of correctly orienting a film prior to filling (See figure 3 and col. 5, lines 26-65).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the invention of Patterson with the film deformation means as taught by Prena for the purpose of correctly orienting a film prior to filling.

4. Claims 16 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Patterson and Ellison in view of Fujii (US 4,124,421).

The modified invention of Patterson discloses the invention as claimed as applied to claims 1 and 13 above except for the use of a vacuum source to assist in the deformation process. However, Fujii teaches that it is old and well known in the art of package forming to utilize a vacuum source 46, located in a female die for the purpose of forming a package with a defined depression (see figure 3 and col. 4, lines 12-42).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the invention of Patterson with the vacuum means as taught by Fujii for the purpose of forming a package with a defined depression.

5. Claims 22-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Patterson and Ellison in view of Porteous (US 5,009,056).

The modified invention of Patterson discloses the invention as claimed as applied to claim 21 above except for introducing the food in a free flowing state and sealing the package after filling. However, Porteous teaches that it is old and well known in the art to form a package from a web of material 14, where the package is filled with a material in a free flowing state and subsequently sealed by heat bonding for the purpose of

Art Unit: 3721

efficiently forming and filling a package (see figures 3, 5, 8 and col. 4, line 4 – col. 5, line 14).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the invention of Patterson with the forming and filling means as taught by Porteous for the purpose of efficiently forming and filling a package.

### ***Response to Arguments***

6. Applicant's amendment to the claims has overcome the rejection under § 112, 2<sup>nd</sup> paragraph.

7. Applicant's arguments filed 7/6/2007 have been fully considered but they are not persuasive.

The teaching of Ellison has been provided to show applicant that it is old and well known to reduce the tension on the film is reduced in a controlled manner during the deforming process.

Additionally, the limitation of the controlled reduction of the film tension is broad in nature and can encompass several reasonable interpretations. Among these are the ability of the material to naturally reduce tension in a controlled manner as a uniform pressure is applied and the film essentially relaxes. Another interpretation is the film tension being reduced as the mold is separated and moved away from each other. In this instance the deformation procedure can encompass the joining and separation of the molds.



Applicant has not defined any structure within the independent claims to support the controlled reduction of the film tension. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Therefore, for the reasons indicated above the rejection is proper.

### **Conclusion**

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul Durand whose telephone number is 571-272-4459. The examiner can normally be reached on 0730-1800, Monday - Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Paul Durand  
September 6, 2007



Rinaldi I. Rada  
Supervisory Patent Examiner  
Group 3700